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TRANSMITTAL
FORM

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/775,425
	Filing Date	February 1, 2001
	First Named Inventor	Lee A. Chase
	Art Unit	3617
	Examiner Name	Russell D. Stormer
Total Number of Pages in This Submission	Attorney Docket Number	LII153B US

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to a Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please Identify below): _____
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Firm or Individual	Remy J. VanOphem
Signature	
Date	April 30, 2003

CERTIFICATE OF TRANSMISSION/MAILING

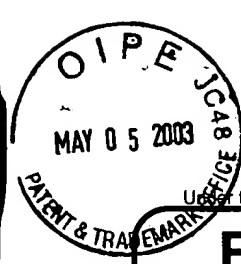
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April 30, 2003

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Signature	
Date	April 30, 2003

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FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 320.00)

Complete if Known

Application Number	09/775,425
Filing Date	February 1, 2001
First Named Inventor	Lee A. Chase
Examiner Name	Russell D. Stormer
Art Unit	3617
Attorney Docket No.	LII153B US

METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Order Other None
 Deposit Account:Deposit Account Number
Deposit Account Name

22-0212

VanOphem & VanOphem, P.C.

The Commissioner is authorized to: (check all that apply)

- Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1001 750	2001 375			Utility filing fee	
1002 330	2002 165			Design filing fee	
1003 520	2003 260			Plant filing fee	
1004 750	2004 375			Reissue filing fee	
1005 160	2005 80			Provisional filing fee	
SUBTOTAL (1)		(\$ 0)			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			-20** =	X	=
			- 3** =	X	=

Large Entity	Small Entity	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 84	2201 42	Independent claims in excess of 3
1203 280	2203 140	Multiple dependent claim, if not paid
1204 84	2204 42	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)		(\$ 0)

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 410	2252 205	Extension for reply within second month	
1253 930	2253 465	Extension for reply within third month	
1254 1,450	2254 725	Extension for reply within fourth month	
1255 1,970	2255 985	Extension for reply within fifth month	
1401 320	2401 160	Notice of Appeal	
1402 320	2402 160	Filing a brief in support of an appeal	
1403 280	2403 140	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,300	2453 650	Petition to revive - unintentional	
1501 1,300	2501 650	Utility issue fee (or reissue)	
1502 470	2502 235	Design issue fee	
1503 630	2503 315	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 750	2809 375	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 750	2810 375	For each additional invention to be examined (37 CFR 1.129(b))	
1801 750	2801 375	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify)			
*Reduced by Basic Filing Fee Paid		SUBTOTAL (3) (\$ 320.00)	

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Remy J. VanOphem	Registration No. (Attorney/Agent)	27053	Telephone	248 362-1210
Signature			Date	April 30, 2003	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/775,425

Group Art Unit No. 3617

Filing Date: February 1, 2001

Examiner: Stormer

Inventor: Chase et al.

Date: April 30, 2003

Title: Vehicle Wheel And Overlay Assembly

* * * * *

Appeal Brief Under 37 CFR §1.192

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Commissioner for Patents
Washington, D.C. 20231

Sir:

This is an Appeal of the Examiner's rejection in a final office action ("Final Office Action") dated November 5, 2002, Paper No. 16, and the subsequently issued Advisory Action dated March 10, 2003, Paper No. 18. A Notice of Appeal was submitted under a certificate of mailing under 37 CFR § 1.8(a) dated March 14, 2003. A return post card submitted with the Notice of Appeal indicates that same was received in the United States Patent and Trademark Office on March 19, 2003. This brief is being filed in triplicate with the associated fee under 37 CFR §1.17(c) in the amount of \$320.00. All applicable extension of time fees were previously paid. If any further fee is deemed to be due, the Commissioner is hereby authorized to charge same to the undersigned's Deposit Account No. 22-0212.

REAL PARTY IN INTEREST

The real party in interest is Lacks Industries, Inc. as the assignee of the individuals named as inventors in this application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences pending that will directly affect or be affected by or having a bearing on the Board's decision in this appeal.

STATUS OF THE CLAIMS

Independent claims 1 and 15, and dependent claims 2-6, 8-11, 13, 14, 16-20, 22-25, 27, and 28 remain pending in this application. Original claims 7, 12, 21, and 26 were cancelled. The Examiner's final rejection of Claims 1-6, 8-11, 13-20, 22-25, 27, and 28 is appealed herein.

STATUS OF AMENDMENTS

A Reply to Office Action under 37 CFR § 1.116 was filed on February 5, 2003, but no amendments to the claims were requested therein. Therefore, it is respectfully requested that Applicant's Reply to Office Action filed February 5, 2003 be considered entered for the purposes of Appeal.

SUMMARY OF THE INVENTION

The invention at issue in this appeal is a vehicle wheel and overlay assembly. The first embodiment of the apparatus according to the present invention is depicted in Figures 1

through 4. Figure 5 illustrates a second embodiment. Figure 6 illustrates a third embodiment. Figure 7 illustrates a fourth embodiment. Figure 8 illustrates a fifth embodiment. Figure 8A illustrates a sixth embodiment. Figure 9 illustrates a seventh embodiment. Figures 10A and 10B illustrate a generic depiction of a margin that is relevant and applicable to all of the embodiments of the present invention.

Independent claims 1 and 15 are exemplified in all Figures 1 through 10B. A concise explanation of the invention defined in the claims follows. For clarity and brevity, the following description will be made with reference to the first embodiment, including reference to the substitute specification by page and line number, and to Figures 1-4 and the reference characters therein. Accordingly, it should be understood that the following summaries apply to the rest of the embodiments of Appellants' invention.

Specifically, claim 1 recites a wheel and overlay assembly (10) comprising a wheel (30) and an overlay (50). The wheel includes an outboard surface (31), a disk portion (33) and a rim portion (36) circumscribing the disk portion. The rim portion includes a rim flange (37) that circumscribes the rim portion and that terminates in a flange lip (38) that includes a radially outermost edge (38a). The overlay includes an outboard surface (52) and is attached to the outboard surface of the wheel. The overlay further includes a web portion (53) and a peripheral flange (57) circumscribing the web portion. The peripheral flange terminates in a rim flange or peripheral lip (58) that includes a radially outermost edge (58a) that is aligned within a predetermined margin of the radially outermost edge of the flange lip of the wheel. Accordingly, as clearly disclosed in the specification the peripheral lip of the overlay cannot extend radially beyond the outermost edge of the flange lip of the wheel, regardless of tolerance variations of the overlay or the wheel, thereby giving the visible impression that the

outboard surface of the overlay is actually the outboard surface of the wheel and not a separately attached component to the wheel assembly.

Moreover, Appellants' independent claim 15 recites a wheel and overlay assembly (10) comprising a wheel (30) and an overlay (50). The wheel includes an outboard surface (31), a disk portion (33) and a rim portion (36) circumscribing the disk portion. The rim portion includes a rim flange (37) circumscribing the rim portion and the rim flange terminates in a flange lip (38) that includes a radially outermost edge (38a) that defines an outer diameter of the wheel. The flange lip further includes an outboard surface portion that is an extension of the wheel's outboard surface (31). The overlay includes an outboard surface (52) and is attached to the outboard surface of the wheel. The overlay further includes a web portion (53) and a peripheral flange (57) that circumscribes the web portion and that terminates in a peripheral lip (58). The peripheral lip includes an inboard surface portion (56) that locates net against the outboard surface portion of the flange lip. The peripheral lip includes a radially outermost edge (58a) that defines a diameter. The diameter of the overlay is within a predetermined margin less than the outer diameter of the wheel. Accordingly, as clearly discussed in the specification the peripheral lip of the overlay cannot extend radially beyond the outermost edge of the flange lip of the wheel, regardless of any tolerance variations of the overlay or the wheel, thereby giving the visible impression that the outboard surface of the overlay is actually the outboard surface of the wheel and not a separately attached component of the wheel assembly.

ISSUES

The issues to be resolved in this appeal are:

1. Are Claims 1, 10, and 11 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,143,426 to Todd?
2. Are Claims 1, 4, 5, 8, 10, and 11 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,829,843 to Eikhoff?
3. Are Claims 1, 10, and 11 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,031,965 to Buerger?
4. Are Claims 1, 4, 5, 10, 11, 15, 18, 19, 20, 24, and 25 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,368,370 to Beam?
5. Are Claims 1, 4, 5, 6, 11, 15, 18, 19, 20, and 25 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,435,631 to Maloney et al.?
6. Are Claims 1, 4, 6, 8, 11, 13, 14, 15, 18, 20, 22, 25, 27, and 28 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,564,791 to Chase et al.?
7. Are Claims 1, 2, 3, 9, 11, 15, 16, 17, 23, and 25 as rejected under 35 U.S.C. § 102 anticipated by the disclosure of U.S. Patent 5,842,750 to Murray et al.?
8. Are Claims 2, 3, 8, and 9 as rejected under 35 U.S.C. § 103 unpatentable over the teachings of Todd?
9. Are Claims 2, 3, 6, 8, and 9 as rejected under 35 U.S.C. § 103 unpatentable over the teachings of Eikhoff?

GROUPING OF THE CLAIMS

Claims 1-6, 8-11, 13, and 14 correspond to Group I.

Claims 15-20, 22-25, 27, and 28 correspond to Group II.

The claims of Groups I and II are separately patentable based on the differences in the characterizations of Appellants' invention.

For each ground of rejection that applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together.

ARGUMENT

The Rejections of Claims 1-6, 8-11, 13-20, 22, 23, 25, 27, and 28 Under 35 U.S.C. § 102 Are Improper As A Matter of Law And Issues 1-7 Should Be Resolved In Appellants' Favor

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. §102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals of the Federal Circuit in *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. §102, the Court stated:

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.”

Appellants' independent Claim 1 requires:

A wheel and overlay assembly, comprising:

a wheel having an outboard surface thereon, said wheel further having a disk portion and a rim portion circumscribing said disk portion, said rim portion having a rim flange circumscribing said rim portion, said rim flange terminating in a flange lip defining a radially outermost edge thereon; and

an overlay having an outboard surface thereon, said overlay being attached to said outboard surface of said wheel, said overlay further having a web portion, and a peripheral flange circumscribing said web portion and terminating in a peripheral lip, **said peripheral lip having**

a radially outermost edge aligned within a predetermined margin of said radially outermost edge of said flange lip of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel;

whereby said overlay gives a visible impression that said outboard surface of said overlay is actually said outboard surface of said wheel and not a separately attached component of said wheel and overlay assembly.

Appellants' independent Claim 15 requires:

A wheel and overlay assembly, comprising:

a wheel having an outboard surface thereon, said wheel further having a disk portion and a rim portion circumscribing said disk portion, said rim portion having a rim flange circumscribing said rim portion, said rim flange terminating in a flange lip defining a radially outermost edge thereon, said radially outermost edge defining an outer diameter, said flange lip having an outboard surface portion; and

an overlay having an outboard surface thereon, said overlay being attached to said outboard surface of said wheel, said overlay further having a web portion and a peripheral flange circumscribing said web portion and terminating in a peripheral lip, said peripheral lip having an inboard surface portion located net against said outboard surface portion of said flange lip, said peripheral lip having a radially outermost edge defining a diameter, said diameter of said overlay being within a predetermined margin less than said outer diameter of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel;

whereby said overlay gives a visible impression that said outboard surface of said overlay is actually said outboard surface of said wheel and not a separately attached component of said wheel and overlay assembly.

None of the Examiner's cited references, including Todd, Eikhoff, Buerger, Beam, Maloney et al., Chase et al. and Murray et al., disclose a peripheral lip of a wheel cover

having a radially outermost edge located within a predetermined margin of the radially outermost edge of a wheel, and in fact none even discuss such a predetermined margin. Furthermore, none of the cited references include any disclosure pertaining to an arrangement of elements adapted to ensure that the peripheral lip of the overlay **cannot extend** radially beyond the outermost edge of a wheel regardless of tolerance variations of either the wheel or the wheel cover. It is clear to any person skilled in the art that any disclosure or drawing illustrations wherein a nominal size wheel cover is shown to extend to the edge of the wheel inherently gives rise to some wheel covers that, due to tolerance variations of either the wheel or the wheel cover, are oversized and extend beyond the edge of the wheel. Accordingly, any drawing illustrations or statements in a specification that disclose a wheel cover designed to radially extend to the edge of the wheel and that do not set forth specific disclosure regarding a structure or arrangement adapted to account for all tolerance variations and to ensure that the wheel cover **cannot extend** radially beyond the wheel does not anticipate Appellants' independent Claims 1 and 15.

The previously cited *Lindemann* case provides that "Anticipation requires... disclosure of each and every element of the claimed invention, arranged as in the claim." None of the references relied on by the Examiner disclose an overlay element arranged as in Appellants' Claims 1 and 15 that specifically describes alignment of the overlay within a predetermined margin of the wheel to insure the overlay **cannot extend** beyond the edge of the wheel regardless of tolerance variations of the overlay and wheel.

In addition to the *Lindemann* "identity" requirement, anticipation further requires that a reference be "enabling" to constitute proper prior art. The Supreme Court has held that a reference must contain a full enabling description in order to constitute anticipation in

Seymour v. Osborne, 78 U.S. 516 (1870). More recently, the Federal Circuit ruled that anticipation requires the applied reference to “describe and enable the claimed invention...with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention” in *Elan Pharmaceuticals, Inc., v. Mayo Foundation*, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002)¹.

In support of the “enablement” prong of anticipation, the Supreme Court has stated that unintended and unappreciated results do not constitute anticipation. *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U.S. 45 (1923). Similarly, the doctrine of incidental disclosure establishes that disclosures in prior patents will not anticipate a later application, where the prior patent accidentally or incidentally shows a similar arrangement that is not essential to the invention of the prior patent. See e.g. *Gray Telephone Pay Station Co. v. Baird Mfg. Co.*, 174 F. 417 (7th Cir. 1909); *A.R. Mosler & Co. v. Lurie*, 209 F. 364 (2nd Cir. 1913); and *United States Metallic Packing Co. v. Hewitt Co.*, 236 F. 739 (7th Cir. 1916).

In response to the Examiner’s contention in item 14, page 7 of the Final Office Action providing that the diameters of the overlays disclosed by Todd, Eikhoff and Buerger are substantially the same, but not greater than the diameters of the rim flanges, it is respectfully

¹ See also *In re Donohue*, 766 F.2d 531 (Fed. Cir. 1985); *Paperless Accounting, Inc. v. Bay Area Rapid Transit Sys.*, 231 USPQ 649 (Fed. Cir. 1986) (a reference “must sufficiently describe the claimed invention to have placed the public in possession of it” and that “disclosure will not suffice as prior art if it was not enabling.”); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675 (Fed. Cir. 1988); *Chester v. Miller*, 15 USPQ2d 1333, 1336 n.2 (Fed. Cir. 1990) (a reference “must put the anticipating subject matter at issue into the possession of the public through an enabling disclosure.”); *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990) a reference “must describe the Applicant(s) claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.”); *In re Paulsen*, 30 F.3d 1475, 1479 (Fed.Cir.1994) (a reference “must be enabling and describe the Applicant(s) claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.”); *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534 (Fed. Cir. 1998); *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367 (Fed. Cir. 2002); *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002) (“To anticipate, the reference must also enable one of skill in the art to make and use the claimed invention.”).

suggested that the disclosure referred to lacks enablement with regard to the overlay not extending radially beyond the diameter of the rim flange and therefore does not anticipate Appellants' invention. Disclosure of a wheel cover designed to extend to the radial edge of the rim implicitly allows for the wheel cover to extend radially beyond the rim due to tolerance variations as is well known to a person skilled in the art. Therefore, any disclosure of a wheel cover extending radially to the edge of the rim, and that does not specifically disclose allowances for tolerance variations to ensure that the cover cannot extend beyond the edge of the rim, cannot enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In other words, one skilled in the art that makes and/or uses a wheel assembly based on disclosure providing a wheel cover designed to extend to the radial edge of the rim will produce wheel covers that, due to tolerance variations of either the cover or the wheel, extend beyond the edge of the rim and therefore because of the lack of specific disclosure to ensure that the cover cannot extend beyond the wheels' outer diameter does not anticipate Appellants' invention.

In item 14, page 7 of the Final Office Action, the Examiner's Response to Arguments section provides:

"Applicants argue that the Todd, Eikhoff, and Buerger patents do not recognize the problems associated with a wheel cover which extends beyond the radially outermost edge of the rim. This cannot be true because all of the references show the outermost lips of the covers or overlays as extending up to but not beyond the outermost edge of the wheel rim."

The undersigned acknowledges that the drawing figures illustrate that the edge of the covers appear to extend up to the edge of the wheel. However, this is insufficient to aid the person skilled in the art to understand that the claims as pending require that under no circumstance

may the cover extend radially beyond the edge of the wheel. The reference lacks disclosure as to the structural limitations required and it is not inherent to a person skilled in the art from an inspection of the drawings of these various prior art references that the peripheral lip of the overlay has "... a radially outermost edge aligned within a predetermined margin of said radially outermost edge of said flange lip of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel..." as specifically recited in both independent claims 1 and 15.

In item 14, page 8 of the Final Office Action, the Examiner's Response to Arguments section further provides:

"Since each of the patents teaches that the cover or overlay extends up to but not beyond the outermost edge of the wheel rim flange, there is no reason to speculate that the covers or overlays can extend beyond the rim flanges, regardless of tolerance variations of the overlay or the wheel rim."

"The arguments on page 10 suggesting that disclosures of the patents used in the rejection somehow "implicitly allow for the wheel cover to extend beyond the outermost edge of the wheel due to tolerance variations" is not understood..."

In view of Appellants' failure to make this point explicitly clear in the prior response, it will be reiterated hereinafter and then explained in greater detail. As previously stated in Appellants' Amendment filed August 2, 2002, the Todd reference discloses at column 3, lines 35-36 "...the peripheral edge 34 of the fascia 26 extends to the edge of the wheel." A person skilled in the art will know that this limited disclosure implicitly allows for the wheel cover to extend beyond the outermost edge of the wheel due to tolerance variations that are inherent in any manufacturing process of a wheel cover and/or a wheel. Therefore, Todd's

limited disclosure in this regard is clearly distinguishable from Appellants' disclosure providing an overlay element having a diameter within a predetermined margin less than the diameter of the wheel to ensure the overlay **cannot extend radially beyond the edge of the wheel**, regardless of tolerance variations. Unless all tolerance variations are taken into account such that the wheel cover at the maximum material or tolerance condition extends no further than the edge of the wheel, a certain percentage of wheel covers manufactured according to a design wherein the cover extends to the edge of the wheel will inherently extend beyond the edge of the wheel.

In item 14, page 9 of the Final Office Action, the Examiner's Response to Arguments section further provides:

“More than an “incidental suggestion,” Todd clearly teaches that the lip or edge 34 of the facial extends to the edge of the wheel as stated in lines 35 and 36 of column 3. The drawings clearly show the outer edge of the rim to be covered by the outer periphery of the overlay and further show that the overlay does not extend beyond the rim flange.”

In the response filed August 2, 2002, Appellants' address the Examiner's contention in the Office Action dated May 5, 2002 that the summation of the teachings of the patent to Todd as an incidental suggestion is offensive to the patent system, and that Todd is not silent on the positioning of the overlay on the wheel as the drawings clearly show the overlay extending to the edge of the rim, it is respectfully suggested that the Examiner has misinterpreted the controlling authority in *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, supra; *Gray Telephone Pay Station Co. v. Baird Mfg. Co.*, supra; *A.R. Mosler & Co. v. Lurie*, supra; and *United States Metallic Packing Co. v. Hewitt Co.*, supra. Appellants' representative did not suggest that the disclosure in Todd is incidental because it is not clearly shown, rather it was

indicated that the disclosure is incidental because Todd does not provide any explanation as to the significance of the relationship between the outermost radial edge of the overlay and the outermost radial edge of the wheel rim. Having previously clarified this point in the Amendment filed August 2, 2002, it is difficult to properly respond to the Examiner's subsequent response to arguments cited immediately above which provides in part "More than an "incidental suggestion," Todd clearly teaches... The drawings clearly show". In light of Appellants' clarification regarding the term "incidental", and the distinction between that which is clearly shown and that which lacks explanation as to the significance of a relationship, it is difficult to understand why the Examiner replies by alleging that Todd provides more than an "incidental suggestion" because of the clarity of the teaching and drawings.

Todd is completely silent regarding advantages and/or disadvantages of the aforementioned relationship, and does not make clear that the relationship is essential to the invention. As Todd does not recognize any of the advantages and/or disadvantages attributable to the relationship between the outermost radial edge of the overlay and the outermost radial edge of the wheel, any results therefrom are unintended and unappreciated, and do not constitute anticipation. *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, supra. Additionally, Todd's arrangement of the outer radial edge of the overlay relative to the outer radial edge of the wheel rim is incidentally shown, is not essential to the invention, and therefore does not constitute anticipation. *Gray Telephone Pay Station Co. v. Baird Mfg. Co.*, supra; *Mosler & Co. v. Lurie*, supra; and *United States Metallic Packing Co. v. Hewitt Co.*, supra. This matter was discussed with the Examiner during the interview because the Examiner interpreted the statement regarding Todd as questioning the validity of the issued

Patent. This interpretation is groundless since as the Examiner states, patents are presumed valid upon issue. Applicants are merely stating that Todd's incidental disclosure in column 3, lines 35 and 36 is clearly insufficient for the purpose of enabling the limitation " ...said peripheral lip having a radially outermost edge aligned within a predetermined margin of said radially outermost edge of said flange lip of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel...".

Beam, Maloney et al., Chase et al. and Murray et al. fail to disclose an overlay element wherein the "diameter of said overlay being within a predetermined margin less than said outer diameter of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel" as required in Appellants' independent Claim 15. More precisely, none of the cited references disclose an overlay element arranged within a predetermined margin less than the outer diameter of the wheel. Furthermore, none of the cited references include any disclosure pertaining to such a predetermined margin arranged to ensure that the peripheral lip of the overlay cannot extend radially beyond the outermost edge of a wheel.

Therefore, in applying the test for anticipation as set forth in *Lindemann*, neither Todd, Eikhoff nor Buerger anticipate either independent Claim 1 or 15. Accordingly, withdrawal of the rejection of independent Claims 1 and 15, as well as dependent Claims 2-6, 8-11, 13, 14, 16-20, 22, 23, 25, 27, and 28 which are but delineations of the invention set forth in the independent claims from which they depend, under 35 U.S.C. § 102 is respectfully requested.

The Rejections Of Claims 2, 3, 6, 8, and 9 under 35 U.S.C. § 103(a) Are Improper As A Matter Of Law And Issues 8 and 9 Should Be Resolved In Appellants' Favor

With respect to the rejections under 35 U.S.C. § 103, it is noted in MPEP Section 706 that the standard of patentability to be followed in the examination of a patent application is that which was enunciated by the Supreme Court in *Graham v. John Deere*, 148 USPQ 459 (1966), where the Court stated:

“Under Section 103, the scope and the content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.”

Accordingly, to establish a prima facie case of obviousness, the Patent Office must; (1) set forth the differences in the claim over the applied references; (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and (3) explain why the proposed modifications would be obvious. To satisfy step (3) above, the Patent Office must identify where the prior art provides a motivating suggestion, inference or implication to make the modifications proposed in step (2) above. *In re Jones*, 21 USPQ2d 1941 (Fed. Cir. 1992).

The mere fact that the prior art may be modified by the Examiner does not make the modification obvious unless the prior art suggests the desirability for the modification. *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992). In the present case, the Examiner has failed to make a proper prima facie showing of obviousness since the Examiner has failed to show how the prior art suggests the desirability of the proposed modification.

Todd, U.S. Patent 5,143,426, is directed to the problem of reduction of vehicle weight by the use of a process of attachment of a plastic overlay coating to a polystyrene base that has been molded to the desired configuration of the component.

To overcome this problem Todd teaches a vehicle wheel construction that eliminates the need to use an adhesive to secure a cover assembly to a wheel. More specifically, Todd teaches an "in situ" molding process to make a wheel and overlay assembly having a polystyrene base that is molded into the general configuration of the wheel against the metal rim. Applied to the molded base by a low pressure injection molding process is a thermoplastic fascia that is allowed to flow around the base to form a mechanical lock, eliminating the need for adhesives. To secure the fascia to the underlying polystyrene base or wheel in the case of the vehicle wheel, the thermoplastic material flows around the edges of the vent openings engaging the underlying wheel rim to secure the overlay to the rim. The thermoplastic fascia 26 is molded over the foam core 24 such that a mechanical lock is formed, thereby eliminating the need for adhesives.

The fascia 26 and base 24 are molded such that openings 28 corresponding to the vent openings 20 of the rim 12 and bores 30 corresponding to the bolt holes 16 are formed to provide the required access. The mechanical lock of the fascia 26 around the base 24 and to the rim 12 is formed through the vent openings 20 by molding the thermoplastic around the edges of the openings 20. A flanged lip 32 is formed to secure the fascia 26 to the steel wheel. For added securement, the lip 32 may also be formed around the boltholes 16. As a result of this mechanical attachment, no adhesive is required. This same securement principal can be used in other components, which have spaced openings such as dashboards

or instrument panels. In components, which do not include openings, the fascia material may be extended completely around the base material 24 to completely enclose the material.

In a preferred embodiment, and as noted in the Background section of Appellants' present application, the peripheral edge 34 of the fascia 26 extends to the edge of the wheel. Beyond this incidental suggestion, Todd is absolutely silent with respect to the relationship of the overlay coating with respect to the axial or radial edge of the wheel. In fact, Todd is ambiguous in this regard since in Figures 1 and 2 the fascia appears to extend beyond the radial edge of the wheel. In any case, when viewed in terms of the general teachings of the several embodiments of Todd, Todd is completely contrary to the structure of the Appellants' preferred embodiment and the features associated therewith because Todd teaches as well as suggests that "the fascia material may be extended completely around the base material 24 to completely enclose the material." Column 3, lines 39-41.

Clearly, the incidental reference with respect to the preferred embodiment of Figures 1 and 2 fails to recognize the problem Applicants have recognized with respect to the relationship between the peripheral outermost edge of the overlay with respect to the outer edge of the wheel. Accordingly, the structural elements taught by Todd to the preferred embodiment of Figures 1 and 2 where the fascia appears to extend to the axial edge of the wheel but beyond the radial edge of the wheel cannot possibly apply to the alternate embodiment of Figures 4a and 4b where the radial edge of the fascia appears to be in line with the radial edge of the wheel as the part is illustrated in the mold. In fact, they appear to be completely contrary to the disclosure of Figures 1 and 2 since none of the advantageous features recited by Todd with respect to his preferred embodiment relate in anyway whatsoever to the incidental disclosure of the alternate embodiment of Figures 4a and 4b.

Eikhoff, U.S. Patent 5,829,423, is directed to the problems associated with prior art wheel cover retention systems using an expanding adhesive material where the adhesive material is insufficient to retain the wheel cover on the wheel.

To solve this problem, Eikhoff teaches a wheel cover retention system wherein the outboard tire bead seat retaining flange of the associated wheel includes a unique machined lock construction for securing a wheel to the cover. The outboard tire bead seat retaining flange includes an outer surface having a circumferential radially inwardly facing groove portion therein. The wheel cover includes an outer annular lip that includes a locking shoulder 64 to extend into the locking catch 62 of the locking arrangement 60. An extended flange portion 54 extends over the top of the rim flange to encase the rim flange and lies within a rim relief area 66 along the tire side of the rim flange.

Appellants' invention is directed to the lack of a cost effective method of achieving an individual aesthetic appearance of a cladded vehicle wheel without wrapping the edge of the cladding or cover around the flange lip of the rim flange of the wheel.

To overcome the problems associated with prior art wheel and cover assemblies, Applicants teach a device wherein the overlay is brought radially outward to ensure the entire outboard face of the wheel is covered, including the flange lip of the rim flange without the costly technique of wrapping the overlay around the flange lip of the rim flange at an economical cost without jeopardizing the structural integrity of the wheel assembly.

The overlay as taught by Appellants' invention is permanently secured to a wheel such that under max/min tolerance conditions of the overlay and/or wheel the overlay is brought radially outward to cover the entire outboard face of the wheel, including the flange lip of the rim flange of the wheel, without extending radially beyond the outer diameter of the wheel.

The present invention includes a wheel having an outboard surface defined by a disk, and a rim circumscribed about the disk. The rim's radial outer periphery (or the disk's outer periphery in the case of a full face wheel) is defined by a rim flange having a flange lip at the axially outermost edge. The overlay has an outboard surface with a web portion, and an integral peripheral flange or rim flange portion circumscribed about the web portion. Further, the peripheral flange or rim flange portion of the overlay also terminates in a flange lip as the radially outermost edge. The peripheral flange portion of the overlay has an inboard surface that is near to the axially outermost edge or flange lip of the rim flange of the wheel, while the radially outermost edge or flange lip of the peripheral flange portion of the overlay is circumferentially aligned within a predetermined tolerance variation of the radially outer periphery of the rim flange of the wheel, such that the peripheral flange portion of the overlay covers the flange lip of the rim flange of the wheel without wrapping over the edge of the wheel or going beyond the peripheral outermost edge of the wheel. This relationship gives a visible impression to the observer of the vehicle or wheel alone that the entire outboard surface of the overlay is actually the entire outboard surface of the wheel. This impression is accomplished without wrapping the overlay's peripheral flange portion around the flange lip of the rim flange, as with some previous prior art. This technique also results in giving an impression to the observer that the wheel is larger than what it should be due to the added thickness of the metal wrapped around the rim flange.

The differences between Appellants' invention and the prior art references cited by the Examiner are quite clear. In the Eikhoff reference, the teachings of the preferred embodiment are completely contrary to the Appellants' teachings of not permitting the overlay to extend beyond the flange lip of the rim flange of the wheel.

Moreover, Todd's disclosure is unclear as to the relationship of the fascia overlap condition with the underlying wheel's structural features. Frankly, there is no disclosure whatsoever in the Todd publication when considering how the adhesive interrelates with the overlay and wheel surface or how the structure of the outer edge of the overlay relates to the edge of the wheel. Also, since Todd teaches that the curled boundary of the fascia 32 helps to secure the overlay to the wheel at the windows and bolt holes it completely fails to suggest, other than an incidental comment, how the outer edges of the overlay and wheel cooperate to provide the impression that the overlay is the wheel. Further, Todd clearly teaches that no adhesive is needed.

Thus, Todd's incidental suggestion that the peripheral edge 34 of the fascia extends to the edge of the wheel is insufficient enablement to form the basis of a rejection against Appellants' claims which, according to the requirements of 35 U.S.C. §112, define clear structural differences of an overlay having a claimed relationship at its outer boundaries with the wheel's outer edge and wherein the overlay is adhesively directly attached to the outer surface of the wheel.

The Examiner alleges that the tolerances and margins between the lip of the overlay and the flange lip taught by Applicants are obvious design expedients that combine with either Todd or Eikhoff to obviate Appellants' structural claimed relationship. The mechanical design expedient rejection is fatally flawed because it fails to take into consideration the particular problem that was recognized by Appellants and that was solved by the claimed construction. Since neither of the Todd or Eikhoff references recognize the problems solved by Appellants' invention, one skilled in the art would have no basis for combining their teachings in the manner suggested by the Examiner. Specifically, neither Todd nor Eikhoff

recognize the problems associated with a wheel assembly having a wheel cover radially extending beyond the edge of the rim. As neither reference even recognized such problems, there can be no motivation or suggestion to include a predetermined margin as a solution thereto. Absent recognition of the problem faced by Applicants, the prior art cannot possibly suggest, singularly or in combination, a solution as novel as Appellants' invention. Furthermore, as none of the Examiner's references recognize the problems associated with a wheel cover radially extending beyond the rim, the Patent Office cannot possibly identify where the prior art provides a motivating suggestion, as required in element 3 of the *In re Jones* analysis cited hereinabove, to make the modifications suggested by the Examiner.

Assuming arguendo that Todd and Eikhoff teach a wheel cover extending to the radial edge of the rim as suggested by the Examiner, such disclosure still fails to obviate Appellants' invention. A person skilled in the prior art will recognize that disclosure teaching a wheel cover designed to extend to the radial edge of the rim implicitly allows for the wheel cover to extend radially beyond the rim due to tolerance variations (i.e. when there is a maximum material condition for the cover and a minimum material condition for the rim). Therefore, any reference teaching a wheel cover extending radially to or beyond the edge of the rim, and that does not make allowances for variation to specifically insure that the cover **cannot extend** beyond the edge of the rim, is contrary to Appellants' teachings for the reasons set forth in the specification. Thus, it is only through Appellants' teachings and disclosure that one of ordinary skill in the art would appreciate the need for such claimed structural arrangement between the associated edges of the overlay and wheel to provide unique aesthetic configurations to a vehicle wheel. In view of this, a person of ordinary skill in the art would

not seek to use the teachings of the references cited by the Examiner to produce the result that Appellants' invention as claimed teaches.

Even if, as the Examiner suggests, the teachings of Todd or Eikhoff singularly or in combination were used in an attempt to obviate Appellants' invention, it is clear from these teachings that the suggested combination could not result in Appellants' invention and would in fact require extensive additional disclosure as well as structure in an attempt to acquire similar results. Specifically, neither reference teaches or suggests alignment of a wheel cover relative to a rim so that the cover **cannot extend** beyond the rim of the wheel. Additionally, neither reference teaches structure including a wheel cover having a diameter substantially equal to but not greater than the outer diameter of the wheel, such that manufacturing and assembly variation can never result in a wheel cover assembly in which the cover extends radially beyond the rim.

The undersigned attorney respectfully submits that independent Claims 1 and 15 are clearly allowable over the disclosure and any teachings of Todd and Eikhoff taken by themselves or in combination. Further, under principles of claim dependency, Todd and Eikhoff do not anticipate Appellants' dependent Claims 2-3, 6, 8-10, 13, 16-17, 20, 22-23 and 27 either. Accordingly, Appellants' invention is an unobvious improvement over the prior art and not an obvious modification of any of the references cited by the Examiner. Reconsideration and withdrawal of the rejection of the claims under 35 U.S.C. §103(a) are, therefore, respectfully requested.

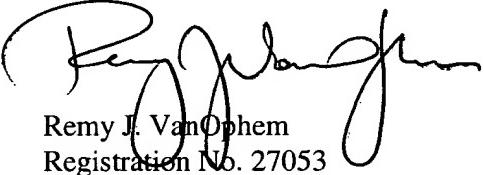
An Appendix that contains the claims on appeal, as pending at the time of the final rejection, is enclosed herewith.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that each of 1-6, 8-11, 13-20, 22-25, 27, and 28 is patentable in scope over the prior art references relied on in support of the Examiner's final rejection. Further, the rejection of such Claims is improper as a matter of law and reversal of the final rejections of the Claims as appealed is therefore respectfully requested.

Respectfully submitted,

VANOPHEM & VANOPHEM, P.C.

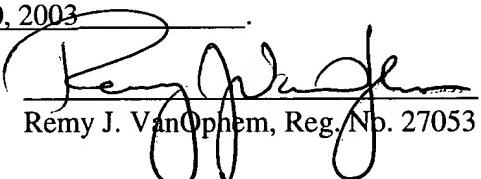

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Certificate under 37 CFR §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on April 30, 2003.

Date: April 30, 2003


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APPENDIX

1. A wheel and overlay assembly, comprising:

a wheel having an outboard surface thereon, said wheel further having a disk portion and a rim portion circumscribing said disk portion, said rim portion having a rim flange circumscribing said rim portion, said rim flange terminating in a flange lip defining a radially outermost edge thereon; and

an overlay having an outboard surface thereon, said overlay being attached to said outboard surface of said wheel, said overlay further having a web portion, and a peripheral flange circumscribing said web portion and terminating in a peripheral lip, said peripheral lip having a radially outermost edge aligned within a predetermined margin of said radially outermost edge of said flange lip of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel;

whereby said overlay gives a visible impression that said outboard surface of said overlay is actually said outboard surface of said wheel and not a separately attached component of said wheel and overlay assembly.

2. The wheel and overlay assembly of Claim 1, wherein said radially outermost edge of said peripheral lip of said overlay is aligned with said radially outermost edge of said flange lip of said wheel within a circumferential margin of about 1.2 to 1.5 millimeters having a bilateral tolerance of about 0.8 millimeters.

3. The wheel and overlay assembly of Claim 2, wherein said radially outermost edge of said peripheral lip of said overlay is aligned with said radially outermost

edge of said flange lip of said wheel further within a circumferential margin of 0 millimeters having a unilateral tolerance of about 1.6 millimeters.

4. The wheel and overlay assembly of Claim 1, wherein said overlay is spaced away from said wheel by an adhesive/sealant bead means and is attached to said wheel with a selectively deposited adhesive.

5. The wheel and overlay assembly of Claim 1, wherein said overlay further comprises:

an inboard surface; and
at least one offset integral with said inboard surface of said overlay,
said at least one offset locating said overlay relative to said rim flange of said wheel.

6. The wheel and overlay assembly of Claim 4, wherein said adhesive is an adhesive means.

8. The wheel and overlay assembly of Claim 1, wherein said overlay includes a heat-resistant metal-plated finish.

9. The wheel and overlay assembly of Claim 1, wherein said overlay includes a heat-resistant paint finish.

10. The wheel and overlay assembly of Claim 1, wherein said overlay includes a weatherable material with no finish applied thereto.

11. The wheel and overlay assembly of Claim 1, wherein said wheel is composed of a metal material.

13. The wheel and overlay assembly of Claim 1, wherein said peripheral flange and said rim flange combine to define industry standard dimensions that meet attachment requirements for industry standard wheel balance weights.

14. The wheel and overlay assembly of Claim 13, wherein said overlay peripheral flange is adapted to accommodate complete attachment of an industry standard balance weight thereto, without having to attach said industry standard balance weight to said wheel rim flange.

15. A wheel and overlay assembly, comprising:

a wheel having an outboard surface thereon, said wheel further having a disk portion and a rim portion circumscribing said disk portion, said rim portion having a rim flange circumscribing said rim portion, said rim flange terminating in a flange lip defining a radially outermost edge thereon, said radially outermost edge defining an outer diameter, said flange lip having an outboard surface portion; and

an overlay having an outboard surface thereon, said overlay being attached to said outboard surface of said wheel, said overlay further having a web portion and a peripheral flange circumscribing said web portion and terminating in a peripheral lip, said peripheral lip having an inboard surface portion located net against said outboard surface portion of said flange lip, said peripheral lip having a radially outermost edge defining a

diameter, said diameter of said overlay being within a predetermined margin less than said outer diameter of said wheel such that said peripheral lip of said overlay cannot extend radially beyond said outermost edge of said flange lip of said wheel regardless of tolerance variations of said overlay and said wheel;

whereby said overlay gives a visible impression that said outboard surface of said overlay is actually said outboard surface of said wheel and not a separately attached component of said wheel and overlay assembly.

16. The wheel and overlay assembly as claimed in Claim 15, wherein said radially outermost edge diameter of said overlay is substantially equal to said radially outermost edge diameter of said wheel within a circumferential margin therebetween of about 1.2 to 1.5 millimeters having a bilateral tolerance of about 0.8 millimeters.

17. The wheel and overlay assembly as claimed in Claim 16, wherein said diameter of said overlay is substantially equal to said diameter of said wheel further within a circumferential margin therebetween of 0 millimeters having a unilateral tolerance of about 1.6 millimeters.

18. The wheel and overlay assembly of Claim 15, wherein said overlay is spaced away from said wheel by an adhesive/sealant bead means and attached to said wheel with a selectively deposited adhesive.

19. The wheel and overlay assembly of Claim 15, wherein said overlay further comprises:

an inboard surface; and
at least one offset integral with said inboard surface of said overlay,
said at least one offset locating said overlay relative to said rim flange of said wheel.

20. The wheel and overlay assembly of Claim 18, wherein said adhesive is
an adhesive means.

22. The wheel and overlay assembly of Claim 15, wherein said overlay
includes a heat-resistant metal-plated finish.

23. The wheel and overlay assembly of Claim 15, wherein said overlay
includes a heat-resistant paint finish.

24. The wheel and overlay assembly of Claim 15, wherein said overlay
includes a weatherable material with no finish applied thereto.

25. The wheel and overlay assembly of Claim 15, wherein said wheel is
composed of a metal material.

27. The wheel and overlay assembly of Claim 15, wherein said peripheral
flange and said rim flange combine to define industry standard dimensions that meet
attachment requirements for industry standard wheel balance weights.

28. The wheel and overlay assembly of Claim 27, wherein said overlay peripheral flange is adapted to accommodate complete attachment of an industry standard balance weight thereto, without having to attach said industry standard balance weight to said wheel rim flange.